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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARTIN VEGA; MARTHA
ALVARADO,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71172

Agency Nos. A95-305-100
A95-305-101

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Martin Vega and Martha Alvarado, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order summarily affirming an immigration judge's order denying their motion to reopen removal

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

proceedings. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Sharma v. INS*, 89 F.3d 545, 546 (9th Cir. 1996). We deny in part and dismiss in part the petition for review.

The agency did not abuse its discretion in denying the motion to reopen because the record indicates that the notice of hearing was mailed to the Petitioners' last known address and the motion to reopen did not provide evidence that the notice was not received. Accordingly, it was not a violation of Petitioners' due process rights to conduct the removal hearing in absentia. *See id.* at 548.

Petitioners contend they were denied due process due to their immigration consultant's failure to notify them of the hearing date. Because Petitioners failed to raise the ineffective assistance of counsel claim before the BIA, they have not exhausted their administrative remedies and we cannot reach the issue. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). A motion to reopen before the BIA is the proper method for raising an ineffective assistance of counsel claim.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.